IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FOURTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

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WRIT PETITION NO : 12925 of 2004

Between:

1 The Deputy Registrar/OSD/District Co-operative

Central Bank Ltd., Cuddapah.
2 The Sale officer, District Co-operative, Central Bank Ltd.,

Cuddapah Dist. Rajampet Branch,Cuddapah. **..... PETITIONERS**

AND

1 A.V.Subaiah, S/o.Late Gangaiah,
R/o.Dalavyipalli, Pullampet Mandal,Cuddapah Dist.
2 The Chairman, A.P.Co-op.Tribunal, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ order or direction more particularly one in the nature of writ of certiorari, to call for the records pertaining to the Judgment in C.T.A. NO.38/ 1999 on the file of the A.P.Co-operative Tribunal, Hyderabad and quash the same as illegal, arbitrary, unconstitutional and consequently set aside the same, and to grant such other relief as this Hon'ble court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: SMT.KAVITHA GOTTIPATI

Counsel for the Respondent No.1: L.J.Veera Reddy

Counsel for the Respondent No.2: None appeared.

The Court made the following :

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ORDER:

Petitioners filed this writ petition to call for the records pertaining to the judgment in C.T.A.No.38 of 1999 on the file of the A.P.Co-operative Tribunal, Hyderabad and to quash the same as illegal and arbitrary.

It is the case of the petitioners that the first respondent herein obtained loan of Rs.9375/- in 1978. As the loan was not repaid, the District Co-operative Central Bank Limited, Cuddapah obtained a certificate under Section 71 (1) of the A.P.Co-operative Societies Act, 1964, (for short 'the Act') from the first petitioner herein in claim No.4556/92-93 dated 22-9-1993. In pursuance thereof, the second petitioner-sale officer conducted auction of the land of the first respondent on 6-11-1996. Aggrieved by the said order, the first respondent herein filed an appeal in C.T.A.No.38 of 1999 before the second respondent-Tribunal and the same was allowed on 17-6-2003. Assailing the same, the petitioners filed this writ petition.

The short question that arises for consideration is as to whether the certificate issued by the petitioners-Bank for recovery of the amount from the first respondent is in violation of the principles of natural justice.

The Tribunal after perusal of the records came to the conclusion that no notice was served on the first respondent herein and the certificate under Section 71 of the Act was issued by the first petitioner herein without conducting any enquiry as contemplated under the Act and as such the same is unsustainable for non-compliance of the mandatory provisions of the Act. It is further observed that the certificate under Section 71 of the Act has to be issued only after conducting an enquiry by giving reasonable opportunity to the aggrieved party. Therefore, the Tribunal allowed the appeal and remanded the matter to the first petitioner to adjudicate the case in accordance with law by conducting an enquiry as

contemplated under Section 71 of the Act. I do not find any error in the order passed by the Tribunal warranting interference of this Court.

Writ Petition is accordingly dismissed. There shall be no order as to costs.

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4th March, 2004

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Copy to:

1. The Chairman, A.P.Co-op.Tribunal, Hyderabad.

2. Two CD copies.